
OLR Bill Analysis

sHB 6406

AN ACT CONCERNING EMPLOYER'S RESPONSIBILITIES AND EMPLOYEE RIGHTS.

SUMMARY:

This bill prohibits employers of at least 50 people in Connecticut from retaliating or discriminating against certain employees for (1) requesting or using certain negotiated or statutory "entitlements and benefits" or (2) filing a complaint with the labor commissioner alleging retaliation or discrimination because of such a request or use. It defines the entitlements and benefits as (1) paid sick leave, (2) maternity leave, (3) vacation time, (4) medical coverage, (5) prescription drug coverage, (6) dental coverage, (7) vision coverage, (8) employee discounts, (9) family and medical leave, (10) and workers' compensation benefits.

The bill also establishes (1) a procedure for the labor commissioner to enforce the bill's provisions and (2) a notice requirement for employers.

EFFECTIVE DATE: January 1, 2012

COVERED EMPLOYERS AND EMPLOYEES

The bill's notice requirement and ban on retaliation and discrimination apply to "employers" which it defines as any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, or other entity (which appears to include state and municipal employers) that employs 50 or more people in Connecticut.

An "employee" is someone who has worked for any employer for at least 520 hours within the last 12 months. It does not specify that the employee must have worked the 520 hours for the current employer (see "COMMENT").

An “employee” must also be someone (1) paid on an hourly basis or (2) subject to the federal Fair Labor Standards Act’s minimum wage and overtime compensation requirements. These requirements generally exclude managers who have authority to hire and fire staff, professional occupations (such as lawyers and physicians), salespeople, and certain skilled computer professionals.

The bill also excludes “day or temporary workers,” and employees of the state higher education system who are (1) part-time or adjunct faculty members, (2) university assistants working less than 20 hours per “work” (presumably, this means “work week”), (3) educational assistants, or (4) other part-time professional employees. It does not define “day or temporary workers.”

RETALIATION OR DISCRIMINATION REGARDING ENTITLEMENTS AND BENEFITS

The bill prohibits employers from retaliating or discriminating against certain employees who request or use their entitlements and benefits, whether negotiated or statutory. It defines retaliation as termination, suspension, constructive discharge, demotion, unfavorable reassignment, refusal to promote, disciplinary action, written or verbal warning, or other adverse employment action.

The bill requires the labor commissioner to impose a \$600 civil penalty for each violation the commissioner finds by a preponderance of the evidence. It allows the commissioner to award all appropriate relief, such as rehiring, reinstatement, payment of back wages, and reinstatement of benefits. It allows parties to appeal the commissioner’s decision in Superior Court, but does not address sovereign immunity issues that could arise from cases with state employees. The bill requires the labor commissioner to administer its provisions within available appropriations.

Existing law provides protection from retaliation or discrimination for using some of the benefits covered by the bill. For example, the state’s family and medical leave act (FMLA) prohibits covered private sector employers from discharging or in any other manner

discriminating against individuals because they exercised their FMLA rights or filed a complaint regarding a violation of their rights. It also prohibits employers from discriminating against an employee in any manner for using up to two weeks of accrued paid sick leave, if the employer provides it in a bona fide written policy, for any of the reasons allowed under the state's FMLA law. Aggrieved employees can file a complaint with the labor commissioner, who must hold a hearing, and can award all appropriate relief, including rehiring, reinstatement, payment of back wages, and reinstatement of benefits. Parties aggrieved by the commissioner's decision can appeal to the Superior Court (CGS § 31-51pp).

The federal FMLA and the state's workers' compensation law provide similar protections and enforcement procedures for employees. Maternity leave could also fall under the protection of state and federal family medical leave laws. In addition, the state's Commission on Human Rights and Opportunities (CHRO) investigates and mediates discrimination complaints.

The bill does not specify how the protections it provides would relate to existing laws and enforcement procedures.

It also does not specify how it would relate to the enforcement procedures and remedies provided by collective bargaining agreements.

NOTICE REQUIREMENT

The bill requires an employer to notify each employee at the time of hire, (1) of his or her negotiated and statutory entitlements and benefits, (2) that employer retaliation for requesting or using the entitlements and benefits is prohibited, and (3) that the employee can file a complaint with the labor commissioner if his or her employer fails to provide notice. Employers can comply with the requirement by displaying a poster that contains the information in English and Spanish in a conspicuous place accessible to employees. The labor commissioner can adopt regulations specifying additional requirements for how employers provide notice. Current law requires

employers to post notice of their policies regarding wages, vacation pay, sick leave, health and welfare benefits, and comparable matters (CGS § 31-71f).

COMMENT

Definition of “Employee”

The bill requires an employer to provide an “employee” with notice of his or her benefits and rights at the time of hire, but a person does not become an “employee” subject to the bill’s notice requirement and protections until he or she has worked for at least 520 hours within the past 12 months.

Because the bill does not specify that the 520 hours of work is for the current employer, it presumably requires the hiring employer to determine how many hours the newly hired employee has previously worked in order to determine if and when the bill’s notice requirement and protections apply. It could also allow an employee to start a new job with the protections offered by the bill and then subsequently lose them (i.e., an employee who worked full-time earlier in the year, was unemployed for several months, and then took a part-time job, could initially meet the 520 hour requirement, but then subsequently lose it for a period of time).

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 6 Nay 4 (03/11/2011)